

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2184 of 2016

In
Civil Writ Jurisdiction Case No.12186 of 2016

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Saurav Kumar, son of late Raj Kishore Sharma, resident of village-Ismilepur,
P.S.- Makhdumpur, District- Jehanabad.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Patna.
3. The Superintending Engineer, Public Health Engineering Department, Patna Circle, Patna.
4. The Executive Engineer, Public Health Engineering Department, Patna East, Patna.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Omkar Kumar, Advocate Mr. Rama Kant Singh, Advocate
For the State	:	Mr. S.Raza Ahmad-AAG-5 Mr. Vishwambhar Prasad, A.C. to A.A.G.-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and

HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 24-09-2019

Heard learned counsel for the appellant and learned
counsel for the State.

The appellant has already been appointed on Class-
IV post on compassionate ground but, he submits that though



the recommendation has been made for appointment on Class-III post but, has been adjusted against Class-IV post.

The Hon'ble Supreme Court in the case of *Umesh Kumar Nagpal v. State of Haryana*, reported in (1994) 4 SCC 138 has held that the compassionate appointment is meant to give financial assistance to the family of an employee who dies in harness. The concept of compassionate appointment is to mitigate the financial constraints when the family of the deceased employee are in penury. The compassionate appointment cannot be claimed by way of right but, it is by way of compassion, which is not in terms of the provisions of Article-16 of the Constitution of India.

Learned counsel for the appellant submits that when the recommendation was made already the vacancy of Class-III post was there, denial of benefit is illegal. However, from the statement made in the counter affidavit, it appears that out of 29 posts of Corresponding Clerical Cadre, 28 posts have been filled up by compassionate appointees. Hence, there cannot be 100% reservation for compassionate appointees.

Learned counsel for the appellant further submits that at the time of recommendation the Circular was not there but, looking to the judgment of the Hon'ble Supreme Court



rendered in the case of *State Bank of India and Anr. vs. Raj Kumar* reported in *(2010) 11 S.C.C. 661*, wherein it has been held that the Circular has to be seen at the time of appointment of the person not at the time of recommendation.

In such view of the matter, this Court does not find any merit in this appeal, accordingly, the same is dismissed. However, the appellant, if so like, may approach the competent authority for needful.

(Shivaji Pandey, J)

(Partha Sarthy, J)

pawan/-

AFR/NAFR	N.A.F.R.
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